

# 10 Facts on Poland for the Consideration of the European Court of Justice

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Marcin Matczak So 13 Mai 2018

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Dear Judges of the Court of Justice of the European Union,

soon you are to decide whether, despite massive legislative changes, the Polish judiciary is still independent and therefore able to ensure a fair trial to people extradited to Poland on the basis of a European Arrest Warrant. As a Polish lawyer, I have decided to use an old tradition of the *amicus curiae* letter – a letter from a friend of the court – to depict the situation of the Polish judiciary in 2018.

In order to do so, I have decided to step down from an abstract level of legislative changes and describe the situation of the Polish judiciary from the perspective of an individual. Therefore, let me present you with 10 facts that have a direct impact on the circumstances of every defendant currently subject to the Polish judicial system. For each fact I have provided several sources, the majority of which are only available in Polish but can be officially translated at your request should the need arise.

## Fact 1: Political objectives of the governing party concerning crime and punishment

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The Polish Minister of Justice's explicitly stated political aim is to toughen criminal policy. On April 24th the Minister held a press conference during which he announced a new campaign against crime as part of a comprehensive reform package presented to the general public under the name "Justice and Security". According to the [information published on the Ministry of Justice's website](#), "the introduction of the changes – besides the reform of the prosecutor's office and courts – will be the most important task of the Ministry of Justice". At the press conference, the Minister announced a wide-ranging reform of the penal code, stating that "the penalties must be adequate to the fault. They must effectively deter criminals (...)." The planned changes will include severe penalties for petty theft, higher penalties for theft of payment cards and hacking of Internet accounts, and higher penalties for bribery.

In April 2018 the Minister of Justice also [announced](#) that the government wanted to "radically increase penalties for the most serious economic crimes". As regards the enforcement of penalties, [measures would be taken](#) to ensure that incarceration became "a kind of shock, an experience that will forever encourage functioning in accordance with the legal order".

On 16 April 2018, in the context of the European Commission's doubts as to respect in Poland for the guarantee of the rule of law, in a [television interview](#) the Prime Minister confirmed that further reforms would be made to the Polish justice system, and stated that the governing party "cannot and certainly will not abandon" the reforms.

The above-described public statements indicate that persecuting defendants is high on the list of the priorities of the governing party. Hence, there is a political pressure to use all the available tools to reach this goal.

## Fact 2: Political control over prosecutors

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The Minister of Justice is both an MP of the governing party and Poland's prosecutor general. As prosecutor, he possesses all the competences of a regular prosecutor plus the right to intervene with every case and command rank and file prosecutors to do whatever he wishes. The Polish constitution does not allow MPs to be prosecutors (see Article 103 point 2 of the Polish Constitution<sup>1</sup>) "No judge, public prosecutor, officer of the civil service, soldier on active military service or functionary of the police or of the services of State protection shall exercise the mandate of a Deputy."); despite several attempts to force the Minister to comply with the constitutional requirement, he has refused to do so.

The current government's new Act on the Public Prosecutor's Office came into force on 4 March 2016 and led to:

- the position of Prosecutor General being combined with that of Minister of Justice (politicisation of the position of Prosecutor General)<sup>2</sup> During a parliamentary debate, one of the leading Law and Order politicians, M.P. Stanisław Piotrowicz, stated that "the public prosecutor's office is the only instrument through which the government can influence court judgments, in order to meet the principle of social justice" (Gazeta Prawna, "Piotrowicz w Sejmie: Niezależne mają być sądy, niezawisli judges – ale nie prokuratura")),
- reorganisation of the Public Prosecutor General's Office (and making a number of personnel changes, e.g. demoting prosecutors holding the highest office) and the introduction of a personnel management system<sup>3</sup> Resolution of the General Meeting of Association Members assessing the functioning of the public prosecutor's office under the Law on the Public Prosecutor's Office of 28 January 2016,
- creation of a special Internal Affairs Department at the Polish Public Prosecutor's Office, dealing with preparatory proceedings concerning the most serious offences committed by judges, assistant judges, prosecutors and public prosecutor's office assistants, and also performing the function of prosecuting authority in such cases before the court.

The changes were widely commented on and criticised by the prosecution service, the opposition and the public.<sup>4</sup> See Michał Magdziak "Zmiany w Prokuraturze: zamiast usprawnienia działania, pogorszenie sytuacji uczestników postępowania", Analiza Forum Obywatelskiego Rozwoju, 7/2016, 3 March 2016; Helsinki Foundation for Human Rights, "Opinion on the subject of draft members' drafts of the Law on the Public Prosecutor's Office and provisions implementing the Law on the Public Prosecutor's Office (list nos. 162 and 163)"; Supreme Court – Studies and Analyses Bureau, "Opinion on the draft Law on the Public Prosecutor's Office" The effect of the changes is that the public prosecutor's office is dependent on the executive authority – the Minister of Justice may directly affect the outcome of criminal cases.

## Fact 3: Changes concerning the organization of courts, including criminal courts

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The aim of the recently passed amendment concerning the Law of the Organization of the Common Courts – according to the declaration of the parliamentary majority – was to dispel constitutional doubts over the new provisions on the ordinary court system.<sup>5)</sup> Act of 12 July 2017 amending the Law on the Ordinary Court System and Certain Other Acts; Journal of Laws of 2017 item 1452. Those provisions gave the Minister of Justice wide powers to appoint and dismiss presidents and vice-presidents of ordinary courts, thereby depriving the judicial self-governing body (the National Council of the Judiciary [NCJ]) of any influence on how these positions are filled.

The changes introduced by the current amendment are, however, a facade and they do not eliminate the lack of compliance with the Constitution of the regulation on the ordinary court system. The regulation retains a mechanism that enables the executive authority to exert influence on ordinary courts, as it makes the Minister's decision to appoint or dismiss the presidents and vice-presidents of courts ultimately dependent on the decision of the NCJ. In view of the parallel changes made to NCJ personnel (described in this letter) and the increased influence of the current governing majority on the composition of this body, in practice the changes are of a highly illusory nature.

The right to appoint and dismiss presidents and vice-presidents of courts gives the Minister a significant influence both on the organizational aspect of judicial activity and beyond it. It engenders a risk of transforming openly or covertly into interference in the way judges decide cases. Court presidents (vice-presidents) have not only supervisory administration functions but also certain jurisdictional functions, e.g. related to the allocation of cases to particular judges. Some powers given to presidents (vice-presidents) have an indirect or direct impact on judges' impartiality: giving consent to a judge taking up additional employment, demanding initiation of disciplinary proceedings, ordering an immediate break in a judge's judicial activities until a resolution is adopted by the disciplinary court. Clear separation of the administrative and strictly judicial functions of court presidents (vice-presidents) is not possible.

The Ordinance of the (current) Minister of Justice dated 28th December 2017 introduced a new electronic system for randomly allocating cases to particular judges.<sup>6)</sup> Journal of Laws 2017, item 2481. That system, whose purpose is to promote transparency in the allocation of cases, is fully controlled by the Minister of Justice who – as Prosecutor General – at the same time is a potential party to every court case. Such control is incompliant with the case law of the European Court of Human Rights.<sup>7)</sup> See *Daktaras versus Lithuania*. Moreover, the Ministry refused to reveal the random selection algorithm to a Polish NGO which requested its public disclosure.

## Fact 4: Unconstitutional changes to the Polish criminal procedure

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After 2015, the current governing majority introduced several changes to the Polish criminal procedure. Those amendments worsen the position of the defendant.

The Act of 11 March 2016 amending the Code of Criminal Procedure and Certain Other Acts introduced to the Polish legal system the rule that evidence obtained illegally, i.e. "fruits of the poisonous tree", could be admitted in criminal proceedings. According to the new wording of art. 168a of the Code of Criminal Procedure (CCP), "evidence cannot be found inadmissible solely on the grounds that it was obtained in breach of procedural provisions or through a prohibited act referred to in art. 1 §1 of the Criminal Code, unless evidence was obtained through a public officer discharging his official duties, as a result of: murder, intentional bodily harm or imprisonment".

The introduction of this Act was strongly criticised both by the judiciary and the public.<sup>8)</sup>Opinion of the National Council of the Judiciary of 22 March 2016 on the Act of 11 March 2016 amending the Code of Criminal Procedure and Certain Other Acts, adopted by the Polish parliament; Dr hab. Prof. Uniwersytetu Jagiellońskiego Paweł Laidler, "Trujące owoce zatrutego drzewa", Instytut Obywatelski, Analiza 2016/10 The effect of the changes it introduces is that state authorities can obtain evidence in breach of the law and subsequently use it in criminal proceedings. This could lead to culpable breach of the law by state officials without them bearing any consequences. The changes also show that the legislature has no respect for established case law of ordinary courts and is in clear breach of the constitutional standard.

Further legislative changes enormously strengthen the position of the prosecutor vis à vis defendants. According to Article 137 point 2 of the Law on the Prosecutor's Office, enacted in 2016, a prosecutor does not bear a disciplinary responsibility for acting in a way that blatantly infringes the law, if he or she acts solely for the public interest. As the term "public interest" is extremely vague, such a regulation constitutes an open encouragement for prosecutors to act illegally while performing their duties.

Another recently enacted regulation allows a prosecutor to withdraw a case from the court at his or her will several times without giving the court a countervailing right to oppose that withdrawal and resubmit the case later.<sup>9)</sup>Article 10 of the Amendment on the Law on the Organization of Common Courts, dated 30th November 2016. The withdrawal of the case does not mean the defendant is acquitted – to the contrary, he or she remains accused and is forced to wait for the resubmission of the case. That regulation can be used by the prosecutor when he or she expects the case to be dismissed in order to enhance it and resubmit when new evidence is gathered. With no countervailing right of the court or the defendant to oppose such a move, the prosecutor can extend the trial as long as he or she wishes.

## Fact 5: Inability to challenge the constitutionality of the amendments to the criminal procedure before the Constitutional Tribunal

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The natural way of questioning unconstitutional legislation is to challenge it before a constitutional court. Unfortunately, this is no longer an option in Poland. In 2015, the current parliament arbitrarily decided that the appointment of three judges to the Constitutional Tribunal (CT) made by the previous parliament was invalid and elected three

other judges in their place; moreover, the President took the oath from the later-elected judges, having refused to take the oath from the three judges nominated by the previous parliament.

Since 19 December 2016, a total of five unauthorised persons (M. Muszyński, L. Morawski [and after his death J. Piskorski], H. Cioch [and after his death J. Wyrembak]) have taken part in passing CT judgments. In a move contrary to the Polish Constitution, one of these unauthorised persons was appointed vice-president of the CT (M. Muszyński). In 2017 the CT issued a total of 88 decisions, while since their appointment these unauthorised individuals have participated in passing 81 decisions; this leaves doubts as to the legality of a majority of recent CT decisions.

In addition to that, a motion filed by the Minister of Justice questioning the legality of the 2010 appointment of the three sidelined judges has led to their being effectively suspended by the Head of the CT. Consequently, in every case to come before the CT, an application has been filed for these judges to be removed. As the CT has still not examined the application on the matter of their election, these judges have been excluded from judicial activities (e.g. in case nos. Kp 4/15 and Kp 1/17). Given the lack of explanation for why the Minister's motion has not been examined for over a year now, the situation can be interpreted as a coordinated manoeuvre by the Minister of Justice and the Head of the CT to unconstitutionally suspend the three judges elected in 2010 .

Politicians of the government majority participate in informal meetings with judges at the CT. As stated by S. Biernat, former CT Vice-president "Justice Minister Zbigniew Ziobro, Deputy Justice Minister Marcin Warchoń, Special Services Coordinator Mariusz Kamiński and Member of Parliament Arkadiusz Mularczyk have been seen at the Tribunal". The CT's office admitted that politicians were received in the CT's building.

Art. 38 of the Act on the Organisation and Procedures of the Constitutional Tribunal states that CT judges, including the presiding judge and the judge-rapporteur, are appointed to the bench by the President of the Tribunal in alphabetical order, having regard to the type, number and order in which cases are submitted to the CT. The President of the Tribunal may derogate from the above-mentioned criteria and assign a judge-rapporteur in justified cases, especially in view of the case's subject-matter.

The decisions of the President of the Tribunal are not transparent. Statistics show a significant disproportion of cases are heard by particular judges – since December 2016, judges appointed by the current parliament are preferred, while those appointed by the previous parliament are discriminated against. For instance, M. Muszyński has been in the panel in 32 cases since his December 2016 appointment by the current Parliament in a manner contrary to the Polish constitution. In the same period, Judge Zubik, whose 2010 appointment has been questioned by the Minister of Justice, has not sat on any panel. In previous years, Judge Zubik was in the panel in 342 cases (an average of 57 cases per year).

In addition, in a recently published decision of the CT, M. Muszyński admitted that the President of the Tribunal changes the judge rapporteur at will if the panel does not agree with the judge rapporteur's view on the case. The lack of procedure for such a change

makes it entirely opaque.

The changes at the Tribunal have led to a drop in public confidence in the institution and consequently in the number of cases submitted to it:

- In 2014, 530 cases were taken to the CT, including 375 individual constitutional appeals,
- In 2015 r. 623 cases were taken to the CT, including 408 individual constitutional appeals,
- In 2016, 360 cases were taken to the CT, including 267 individual constitutional appeals,
- In 2017, 282 cases were taken to the CT, including 231 individual constitutional appeals.<sup>10)</sup>Batory Foundation report „Analiza działalności orzeczniczej Trybunału Konstytucyjnego w latach 2014 – 2017”.

The significant decrease in the number of individual constitutional appeals between 2015 and 2017 should be interpreted as a sign of distrust in the CT's ability to protect individual constitutional rights effectively.

The number of questions referred by the regular courts to the CT has also dropped significantly. The number of referrals in 2015 amounted to 135, while the number of referrals in 2017 was only 21. This decrease should be interpreted as a sign of distrust in the CT's ability to decide constitutional cases which are important for regular courts, including criminal courts.

The best illustration of the inability to challenge the constitutionality of the legislation before the CT is the Human Rights Ombudsman's (HRO's) attempt to challenge the constitutionality of the legislation introducing the “fruits of the poisonous tree” (use of evidence obtained in breach of procedural provisions or through a prohibited act) into the Polish criminal procedure. In an application of 6 May, 2016, the HRO applied to the CT for a judgement on the constitutionality of allowing into criminal proceedings evidence obtained in breach of procedural provisions or through a prohibited act. In April 2018, the HRO was forced to withdraw the application due to the CT President's unlawful interference in the composition of the bench hearing the case. Originally the case was to be heard by a full bench, but after J. Przyłębska became CT President in December 2016, the bench was groundlessly changed to a bench of five judges, on which sat two unauthorised persons: M. Muszyński and L. Morawski.

Then, two CT judges elected by previous parliaments were removed from the case. The case was finally heard by the CT in a bench chosen entirely by the current parliament. The same thing occurred in March 2018 in the case of an application filed by the HRO concerning the constitutionality of a law amending the rules for surveillance by the secret service.

As a consequence, Poland's CT is not at present meeting its constitutional obligations. Nor is it able to protect citizens against the infringement of their constitutional rights and freedoms as a consequence of unlawful measures taken by the executive authorities and of the legislative lawlessness of the legislator. The CT's inability to perform its constitutional function is of utmost importance to the individuals involved in criminal cases. Not only are

they deprived of the possibility to challenge the legislation influencing their rights via general constitutional motions (like those filed by the parliamentary opposition or HRO), but they cannot be sure their individual constitutional appeals (filed after the individual trial has ended) will be examined by an independent constitutional court.

## Fact 6: Limitations to regular courts performing a constitutional review

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With the CT ceasing to fulfil its function of providing centralised constitutional review, the only alternative is the decentralised variety, performed by the regular courts. Such decentralised constitutional review is actively combated by the Minister of Justice, who has criticized judges for performing it and threatened them with disciplinary proceedings. As a result, no effective constitutional review concerning legislation on evidence admissible in criminal cases is currently performed.

An example of an attempt to exert influence on the justice system in criminal cases are statements made by representatives of the Ministry of Justice in the wake of a judgment issued by the Court of Appeal in Wrocław in April 2017, in which the court made a decentralised constitutional review. The Court refused to apply criminal provisions which it deemed clearly contrary to the Polish Constitution, without referring the question concerning their constitutionality to the CT (an action based on Article 8 point 2 of the Polish Constitution). The case involved provisions on evidence obtained in breach of procedural provisions or through a prohibited act (i.e. 'fruits of the poisonous tree'). The Court found persons accused of corruption which had been provoked by entrapment on the part of the Central Anti-Corruption Bureau not guilty of the acts of which they had been accused. The Court found that evidence obtained in a manner contrary to the Polish Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms is not admissible.

In a press release responding to the decision, the Deputy Minister of Justice, Marcin Warchoł, compared the reasoning of the Court of Appeal in Wrocław with reasoning which would cite the constitutional protection of individual privacy to justify "being acquitted of sexual intercourse with an 11-year old"; he then suggested that issuing a judgment in the case in question could (implicitly for judges) lead to disciplinary or criminal liability ("In this case, the issue not only of disciplinary, but also of criminal liability remains open").

## Fact 7: Threats of disciplinary and criminal proceedings against judges

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The Minister of Justice and his deputies in their public statements threaten judges with disciplinary and criminal proceedings, trying to influence judicial independence by doing so.

For instance, the Minister of Justice publicly criticized the judges of the District Court for Warszawa-Mokotów who refused to accept the prosecutor's motion for arrest in a criminal case. The Minister said: "The Court could have committed a criminal act by not fulfilling its duties properly". The prosecutor's office appealed and the court of higher instance accepted the prosecutor's motion for arrest. The Polish National Council of Judiciary



condemned the Minister's statement as an attempt to influence judicial decisions concerning arrests. The NCJ stated that "one can have an impression that every judge that refuses to accept the motion of the prosecutor (...) risks criminal liability.

Another example of activities involving the exertion of influence on persons holding judicial office is the case of judge Waldemar Żurek, NCJ spokesman and former court press officer of the Regional Court in Krakow. Judge Żurek has been one of the most vocal critics of the government's take-over of the judiciary, and he is often present in the media. A description of the actions taken against this judge is set out in a resolution adopted on 26 February 2018 by the Meeting of Representatives of the Krakow District Judges. This resolution shows that law enforcement authorities are "subordinated to political factors" and that for around two years the new President of the Regional Court in Krakow has taken repressive measures against judge Żurek, inter alia:

- he was interrogated five times by the public prosecutor's office and the Central Anti-Corruption Bureau during groundless proceedings, already lasting almost eighteen months, concerning an inspection of a declaration of financial interests;
- contrary to the law, these proceedings had been conducted for six months without having been formally opened;
- measures were taken to harass and interrogate judge Żurek's parents, who are both over seventy years old;
- a smear campaign was run in the media against judge Żurek, which led to a wave of hate speech against him in the form of numerous telephone calls and text messages, some of which contained threats;
- unjustified checks were carried out of the financial standing of judge Żurek's wife (who is six months' pregnant);
- inspection of cases heard by judge Żurek were ordered by the Minister of Justice on the basis of anonymous reports;
- harassment took place: judge Żurek was removed from his position of court press officer despite the absence of the required opinion from the court College, and one of the persons who opposed the measure – Judge Ewa Ługowska – was dismissed as President of the District Court in Wieliczka.

One of the elements of the reforms concerning the Supreme Court was to establish a new Disciplinary Chamber, responsible for disciplinary proceedings concerning judges. The members of the Disciplinary Chamber will be appointed by the new NCJ, whose members are closely linked to the Minister of Justice. To encourage candidates to apply to join the Disciplinary Chamber, the new legislation stipulates that the members of the Chamber will receive 40% additional remuneration for performing their duties.

The Minister of Justice's public statements indicate that he intends to use the Chamber as a tool to limit judicial independence. For instance, the Minister of Justice publicly stated that the judges who refuse to apply Polish statutes because they find them non-compliant with international conventions can face disciplinary proceedings, and that the newly established Disciplinary Chamber at the Supreme Court is necessary to take care of such cases.



The scope of this letter does not allow all the examples of harassment of judges by the Minister of Justice or his deputies to be presented. Those cases include judges in courts in Suwałki, Szczecin, one deciding a private case of the Deputy Minister of Justice Patryk Jaki and another in Krakow who acquitted doctors in a case concerning the death of the Minister of Justice's father. (The latter judge has been accused of spending too much money on the opinions of the expert witnesses .)

Public statements by the representative of the Ministry of Justice and the harassment of prominent judges has very likely caused a chilling effect on other judges, thus impacting their independence in deciding cases.

## Fact 8: The new way of appointing the National Council of the Judiciary and its impact on disciplinary proceedings concerning judges

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As a result of legislative changes concerning the NCJ, the legislature (Polish parliament) can now elect 21 of the 25 members of the NCJ, and the mandate of previous judicial members of the NCJ expired on the election of 15 new members by the Polish parliament.

The majority of the new judicial members are closely related to the Minister of Justice, and thus to the government. This is because most of them were chosen from among candidates with links to the Minister of Justice, i.e. persons working at the Ministry of Justice and reporting to the Minister in the past,<sup>11)</sup> Paweł Kazimierz Styrna – a judge formerly delegated to carrying out administrative tasks at the Ministry of Justice; Rafał Puchalski – a judge formerly delegated to carrying out administrative tasks at the Ministry of Justice; Maciej Andrzej Mitera – a judge formerly delegated to carrying out administrative tasks at the Ministry of Justice. and persons appointed to administrative positions in courts by the Minister of Justice (since July 2017 appointments are made without the participation of the judicial self-governing body).<sup>12)</sup> Dariusz Drajewicz – Vice-president of the Regional Court in Warsaw appointed by the Minister of Justice on the application of the court president on 13 September 2017; Jarosław Dudzicz – President of the Regional Court in Gorzów Wielkopolski appointed by the Minister of Justice on 27 November 2017; Maciej Andrzej Mitera – President of the District Court for Warszawa-Śródmieście in Warsaw appointed by the Minister of Justice on 7 February 2018; Rafał Puchalski – President of the Regional Court in Rzeszów appointed by the Minister of Justice on 1 February 2018; Maciej Nawacki – President of the District Court in Olsztyn appointed by the Minister of Justice on 19 December 2017; Paweł Kazimierz Styrna – Vice-president of the Regional Court in Kraków appointed by the Minister of Justice on 7 February 2018.

Parliament's decisive influence on the personnel of the NCJ has led to:

- imbalance in the separation of powers and breach of the principle of independence of the judiciary;
- a significant fall in the guarantee of judicial impartiality due to the judges being deprived of influence on the personnel and activities of the NCJ, with a simultaneous increase in the influence of the legislature (parliamentary majority), and thus to a fall in the guarantee of the proper exercise of the constitutional right to a fair trial;

- by extension, an increase in political influence over who holds the position of judge (the NCJ has a constitutional duty to put forward candidates for judges of courts of all levels and types).

The effect of the changes on proceedings in criminal cases create a risk of the parliamentary majority having an indirect influence on the holders of judicial office in criminal sections of ordinary courts and justify doubts as to the impartiality of judges appointed under the post-amendment NCJ.

What is more, the new NCJ will be directly responsible for appointing all judges of the newly created Disciplinary Chamber in the Supreme Court. The Minister of Justice, having control over the NCJ, will influence the appointment of members of the Disciplinary Chamber. This will be a clear breach of the constitutional order

## Fact 9: Other factors endangering the position of the defendant

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Besides the facts described above, there have been many other factors negatively affecting the guarantees of a fair trial in Poland. In 2017 and 2018, defence lawyers have been increasingly forced to disclose information received within the attorney-client privileged communication. As the Dean of the Warsaw Bar Association, Mikołaj Pietrzak, stated: “Last year we had 60 such cases, this year already several dozen”. The HRO indicated that in 2017 the courts released attorneys from the confidentiality obligation in 67% of cases in which prosecutors asked for such release. The phenomenon poses an obvious threat to basic procedural guarantees in criminal justice.

New tools given to the Minister of Justice by the statute concerning the Supreme Court include the right to submit an extraordinary appeal. This tool allows the Minister to reopen almost every court case of the last 20 years, as well as almost every case, including criminal ones, on which a final decision will be made in the future. If the case is reopened, it will be decided by yet another new chamber of the Supreme Court which will be soon appointed by the NCJ, which is in turn fully controlled by the Minister (see Fact 8).

New legislation enacted within last two years allows for a broad invigilation of Polish citizens. This legislation cannot be challenged before the Constitutional Tribunal for reasons described above (Fact 5). This legislation gives the government the upper hand in criminal proceedings, leaving the defendant unable to protect his or her constitutional rights.

## Fact 10: A systematic threat to the rule of law and to the possibility of a fair trial in Poland

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Recent government measures have led to deterioration in the rule of law in Poland, which has affected proceedings and decisions in criminal cases.

The measures have resulted in:

- the public prosecutor’s office becoming dependent on the executive authority;

- legislation of the use in criminal proceedings of evidence obtained in breach of the law, contrary to the Polish Constitution;
- paralysis of the Constitutional Tribunal, the body set up to carry out constitutional reviews of the law and to protect constitutional rights and freedoms;
- the previously autonomous authority, the NCJ, becoming dependent on the legislature and the Minister of Justice;
- the risk of the parliamentary majority having an indirect influence on judicial appointments in criminal sections of ordinary courts;
- the risk of the executive authority influencing the appointment of Supreme Court personnel, in particular the Disciplinary Chamber and the Chamber responsible for extraordinary appeals;
- attempts by the executive authority (the Minister of Justice) to exert pressure on judges, including judges carrying out "decentralised constitutional reviews";
- politically motivated appointments and dismissals of presidents and vice-presidents of courts;
- the harassment of judges and the creation of a chilling effect, which result in the infringement of judicial independence.

I trust the above-presented facts will be of help in understanding the circumstances of every defendant currently subject to the Polish judicial system.

Yours faithfully,

Marcin Matczak

## References [ ± ]

1. ↑ "No judge, public prosecutor, officer of the civil service, soldier on active military service or functionary of the police or of the services of State protection shall exercise the mandate of a Deputy."
2. ↑ During a parliamentary debate, one of the leading Law and Order politicians, M.P. Stanisław Piotrowicz, stated that "the public prosecutor's office is the only instrument through which the government can influence court judgments, in order to meet the principle of social justice" (*Gazeta Prawna*, "Piotrowicz w Sejmie: Niezależne mają być sądy, niezawisli judges – ale nie prokuratura")
3. ↑ Resolution of the General Meeting of Association Members assessing the functioning of the public prosecutor's office under the Law on the Public Prosecutor's Office of 28 January 2016
4. ↑ See Michał Magdziak "Zmiany w Prokuraturze: zamiast usprawnienia działania, pogorszenie sytuacji uczestników postępowania", *Analiza Forum Obywatelskiego Rozwoju*, 7/2016, 3 March 2016; Helsinki Foundation for Human Rights, "Opinion on the subject of draft members' drafts of the Law on the Public Prosecutor's Office and provisions implementing the Law on the Public Prosecutor's Office (list nos. 162 and 163)"; Supreme Court – Studies and Analyses Bureau, "Opinion on the draft Law on the Public Prosecutor's Office"
5. ↑ Act of 12 July 2017 amending the Law on the Ordinary Court System and Certain Other Acts; Journal of Laws of 2017 item 1452.
6. ↑ Journal of Laws 2017, item 2481.
7. ↑ See *Daktaras versus Lithuania*.

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8. ↑ Opinion of the National Council of the Judiciary of 22 March 2016 on the Act of 11 March 2016 amending the Code of Criminal Procedure and Certain Other Acts, adopted by the Polish parliament; Dr hab. Prof. Uniwersytetu Jagiellońskiego Paweł Laidler, "Trujące owoce zatrutego drzewa", Instytut Obywatelski, Analiza 2016/10
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9. ↑ Article 10 of the Amendment on the Law on the Organization of Common Courts, dated 30th November 2016.
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10. ↑ Batory Foundation report „Analiza działalności orzeczniczej Trybunału Konstytucyjnego w latach 2014 – 2017”.
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11. ↑ Paweł Kazimierz Styrna – a judge formerly delegated to carrying out administrative tasks at the Ministry of Justice; Rafał Puchalski – a judge formerly delegated to carrying out administrative tasks at the Ministry of Justice; Maciej Andrzej Mitera – a judge formerly delegated to carrying out administrative tasks at the Ministry of Justice.
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12. ↑ Dariusz Drajewicz – Vice-president of the Regional Court in Warsaw appointed by the Minister of Justice on the application of the court president on 13 September 2017; Jarosław Dudzicz – President of the Regional Court in Gorzow Wielkopolski appointed by the Minister of Justice on 27 November 2017; Maciej Andrzej Mitera – President of the District Court for Warszawa-Śródmieście in Warsaw appointed by the Minister of Justice on 7 February 2018; Rafał Puchalski – President of the Regional Court in Rzeszow appointed by the Minister of Justice on 1 February 2018; Maciej Nawacki – President of the District Court in Olsztyn appointed by the Minister of Justice on 19 December 2017; Paweł Kazimierz Styrna – Vice-president of the Regional Court in Krakow appointed by the Minister of Justice on 7 February 2018.
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SUGGESTED CITATION Matczak, Marcin: *10 Facts on Poland for the Consideration of the European Court of Justice*, *VerfBlog*, 2018/5/13, <https://verfassungsblog.de/10-facts-on-poland-for-the-consideration-of-the-european-court-of-justice/>.